

No.13-1669 RI

At the end of the hearing, the parties agreed to a briefing schedule of 30 days for Respondent, 30 days for Petitioner, and 15 days for a reply. However, Petitioner filed a brief on

April 2, 2014, so our briefing schedule directed Respondent to file his brief by July 10, 2014, and stated the case would be ready for decision at that time. The case became ready for our decision on July 10, 2014, when Respondent filed his brief.

Findings of Fact

1. In 2010, Folwarczny was a resident of Missouri.
2. Folwarczny filed his 2010 federal income tax with a Missouri address and possessed a Missouri driver's license.
3. In 2010, Folwarczny had a federal adjusted gross income ("FAGI") of \$61,471.
4. Folwarczny did not file a Missouri income tax return for 2010.
5. On August 29, 2013, based on Folwarczny's FAGI for 2010, the Director issued a final decision assessing the following:

| | |
|--------------------|------------------|
| Income Tax – | \$2,695.26 |
| Additions to Tax – | \$ 673.82 |
| Interest – | <u>\$ 163.05</u> |
| Total – | \$3,532.13 |

6. On September 16, 2013, Folwarczny filed his appeal the aforementioned final decision with us.

Conclusions of Law

This Commission has jurisdiction over appeals from the Director's final decisions. Section 621.050.1.¹ Our review is *de novo*.² Our duty in a tax case is not to review the Director's decision, but to find the facts and to determine, by the application of existing law to those facts, the taxpayer's lawful liability. Folwarczny bears the burden to show his tax liability for 2010 is something other than what the Director assessed.³

¹Statutory references are to the 2000 Revised Statutes of Missouri, unless otherwise noted.

²*J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990).

³Sections 621.050.2 and 143.661.

Section 143.011 provides, in relevant part: “A tax is hereby imposed for every taxable year on the Missouri taxable income of every resident.” For computation of an individual resident’s liability, § 143.111 provides:

The Missouri taxable income of a resident shall be such resident’s Missouri adjusted gross income less:

- (1) Either the Missouri standard deduction or the Missouri itemized deduction;
- (2) The Missouri deduction for personal exemptions;
- (3) The Missouri deduction for dependency exemptions;
- (4) The deduction for federal income taxes provided in section 143.171; and
- (5) The deduction for a self-employed individual’s health insurance costs provided in section 143.113.

Section 143.121 provides that the Missouri adjusted gross income of a resident shall be his FAGI, subject to certain modifications that are not applicable in this case. Section 143.481(1) provides:

An income tax return...shall be made by the following:

- (1) Every resident individual who has a Missouri adjusted gross income of one thousand two hundred dollars or more and who is required to file a federal income tax return[.]

Missouri may tax the income of a resident regardless of the source from which the income is earned.⁴ Folwarczny had a FAGI of \$61,471 in 2010. Because he was a resident of Missouri in 2010, he is subject to Missouri income tax and was required to file a Missouri return.

⁴ *Oklahoma Tax Comm’n v. Chickasaw Nation*, 515 U.S. 450, 462-63, 115 S. Ct. 2214, 2222 (1995); *Lloyd v. Director of Revenue*, 851 S.W.2d 519, 522 (Mo. banc 1993).

At the hearing Folwarczny claimed that he was homeless in 2010 and that he was transient between Missouri and Texas. However, the evidence shows that Folwarczny possessed a Missouri driver's license in 2010 and used a Missouri address on his 2010 federal income tax return. We conclude that Folwarczny was a Missouri resident in 2010.

Also at the hearing, Folwarczny claimed that there was an ongoing investigation by the United States Equal Employment Opportunity Commission ("EEOC") regarding a claim he filed and that his 2010 FAGI was yet to be determined. However, Folwarczny was unable to provide documents evidencing this ongoing investigation. Further, we decline to credit his testimony over the federal income tax documents indicating his FAGI, which are the best evidence. We therefore conclude Folwarczny's FAGI for 2010 was \$61,471.

Because Folwarczny did not meet his burden to prove his income tax liability is other than what the Director assessed in the final decision at issue, we conclude Folwarczny is liable for \$2,695.26 in Missouri income tax for 2010.

Additions

Additions to tax are imposed by statute as a consequence for failure to file a return "on or before the fifteenth day of the fourth month following the close" of the tax year.⁵

Section 143.741 provides:

1. In case of failure to file any return required under sections 143.011 to 143.996 on the date prescribed therefor..., unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is not for more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate....

⁵Section 143.511.

Section 143.751 provides:

1. If any part of a deficiency is due to negligence or intentional disregard of rules and regulations (but without intent to defraud) there shall be added to the tax an amount equal to five percent of the deficiency. The director shall apprise the taxpayer of the factual basis for the finding of negligence, or the specific rules or regulations disregarded, at the time the director issues a proposed assessment. . . .

Negligence is “the failure to make a reasonable attempt to comply with the state tax laws.”⁶ Folwarczny presented testimony that was contradicted by both state and federal government documents, and was not otherwise credible. From this, we infer that his noncompliance was both willful and intentional. An addition to tax is justified here. We impose an addition of 25%, or \$673.82.

Interest

Section 143.731 imposes interest on an underpayment of income tax, from the date the payment was due, at the rate determined by §32.065. Therefore, Folwarczny is liable for such interest on the income tax owed.

Summary

Folwarczny is liable for \$2,695.26 in income tax, \$673.82 in additions to tax, plus statutory interest for 2010.

SO ORDERED on August 1, 2014.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

⁶ *Hiatt v. Director of Revenue*, 899 S.W.2d 870, 872 (Mo. banc 1995).